

Funds in Court Information Guide Building or Modifying a Property



This is a summary of the Senior Master's procedures for building or modifying a property. Please discuss your application with your Trust Officer before you submit it to the Court.

A reference to the Senior Master includes a reference to the Judicial Registrar, where the Judicial Registrar has the authority to make a decision.

SENIOR MASTER'S PRIOR APPROVAL NECESSARY

First, **under no circumstances** should you enter any contract or in any way commit yourself with respect to a building project which you hope will be funded, even partially, from the funds in Court **[the funds]**, unless the Senior Master has expressly approved such action. If you act without the Senior Master's **express prior approval**, you may risk not being indemnified or reimbursed from the funds for any liability you have created.

'APPROVAL IN PRINCIPLE'

You will need to prepare and submit an application for the 'in principle' approval of the Senior Master. This should be done by first discussing the project with your Trust Officer.

Please note that the Senior Master requires the use of a registered building practitioner for all building works proposed to be paid for from the funds.

In considering an application for approval-in-principle, the Senior Master will decide whether:

- the use of funds for building or renovating is in the best interests of

the beneficiary; and

- whether or not it is affordable in the context of the funds and the beneficiary's future needs.

To make a decision the Senior Master requires:

- a fully costed price for the building project
- evidence that the proposed building works will be suited to the beneficiary's needs. A report from an Occupational Therapist, Client Liaison Officer or specialised building practitioner may be required.

WHERE THE BENEFICIARY IS A MINOR

When the Senior Master decides to build or modify a dwelling for a minor beneficiary, in which the beneficiary's parents and siblings will also reside, the Senior Master expects that the parents will contribute to the upkeep of the dwelling and the usual purchase of white goods, furniture etc. just as they would have to do for their family if the beneficiary did not have funds in Court. Therefore, you will need to indicate to the Senior Master, for example, who will pay when the interior needs painting, who will buy the new fridge or washing machine, who will maintain the garden or who will pay if the hot water service breaks down?

The Senior Master **WILL NOT** give approval 'in principle' unless these matters are clarified.

PROTECTING THE BENEFICIARY'S INTEREST

If the land or dwelling **[the property]** was not purchased (or not fully purchased)



from the funds and funds are requested to build or renovate a dwelling, the Senior Master is likely to require that an interest in the property be transferred to trustees for the beneficiary.

The Senior Master might require that the other proprietors of the property enter into a formal undertaking to the Court, or into an agreement with trustees, regarding any co-ownership arrangements.

Please note that when the Senior Master is considering the release of funds in these circumstances an opinion from FIC's Legal Services Section will usually be required. This will increase the time required for consideration of the project.

TRUSTEES

All interests in property financed from the funds are held in 'trust' for the beneficiary by two solicitors who, as trustees, act on the Senior Master's instructions. Although the solicitors will be the 'legal owners', the property remains completely under the control of the Senior Master.

Please note that only the trustees may sign a contract for building works.

In accordance with a deed signed by them, the trustees must seek the direction of the Senior Master about dealing in any way with the trust property. This includes signing a contract regarding building works at the trust property.

SENIOR MASTER TO CONSIDER CONTRACT DOCUMENTS

If the property is held by trustees, they must not sign any contract for building works unless and until the Senior Master directs they can do so.

If the property is held by proprietors who are not trustees, they must also await the Senior Master's decision whether or not to pay for, or contribute to, the building project from the funds in Court.

If an application for funds for a building project is made after a contract is signed, the Senior Master may decide not to consider it.

The Senior Master will require advice from FIC's Legal Services Section about the proposed contract, which will add to the time required for consideration of the project.

SPECIFIC REQUIREMENTS WHEN FUNDS REQUESTED TO BUILD A DWELLING

The proposed builder must be a registered building practitioner. The proposed builder must provide appropriate references, including contact details for the owners of previous building projects.

The services of a registered architect or building consultant must be obtained to inspect each stage of construction before each payment is made to the builder.

The registered building practitioner must use an appropriate industry standard building contract. Special conditions providing for the involvement of the Senior Master will be inserted into the building contract by FIC's Legal Services Section.

In addition, it will be necessary to increase the insurance cover for the property once the building works are underway.



VARIATIONS MUST BE APPROVED BY THE SENIOR MASTER

The Senior Master **must** approve, in writing, any variation to a building contract that affects the contract price. Unless the Senior Master has approved the variation, payment for it **will not** be made from the funds. Accordingly, the Senior Master will require the inclusion of a special condition to this effect in the standard contracts.

Please remember that although the building project is financed from the funds, it will be your home, and there may be matters you wish to raise. Please feel free to discuss all such matters with your Trust Officer.

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